



May 25, 2000

Ms. Tracy B. Calabrese
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-2072

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135556.

The City of Houston Police Department (the "department") received a request for "any and all Internal Affairs Division policies, procedures, and operational manuals." You seek to withhold from the requestor "some responsive information."¹ You have provided for our review the department's "Standard Operating Procedures" pertaining to "for cause" drug testing of department employees. You assert that this information is excepted from required public disclosure by section 552.108 of the Government Code. We have considered the exception you assert and reviewed the submitted information.

In relevant part, section 552.108 provides as follows:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

Gov't Code § 552.108(b)(1). Unless the information in question supplies the explanation on its face, a governmental body claiming an exception under section 552.108 must provide a

¹We therefore assume that you have released to the requestor all of the information that is responsive to the request, other than the information you have submitted for our review. See Gov't Code §§ 552.301, .302.

reasonable explanation as to how and why section 552.108 applies to that information. *See* Gov't Code §§ 552.108, 552.301; *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 (1986). We note that the information supplies no explanation on its face as to how and why section 552.108 excepts the information from disclosure. Additionally, you make no arguments in support of the section 552.108 assertion. However, you have provided this office a statement from an Internal Affairs Division Lieutenant. The Lieutenant states that release of the information at issue "would alert officers to the procedure used by the Division for drug testing, possibly allowing them to manipulate evidence or try to influence personnel involved in the testing procedure." Upon careful consideration of this argument and review of the information at issue, we determine that you have demonstrated the applicability of section 552.108(b)(1) to the information. We therefore conclude that you may withhold the information in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

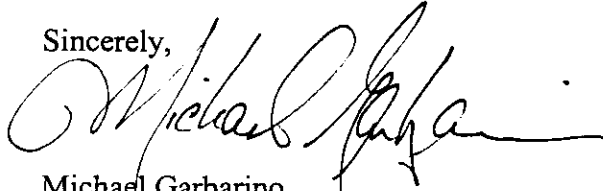
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/ljp

Ref: ID# 135556

Encl. Submitted documents

cc: Ms. Patricia A. Lawson
9597 Jones Road, #241
Houston, Texas 77065
(w/o enclosures)